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The Law Society of Manitoba

COMMUNIQUÉ

IN THIS ISSUE

1 President's Report

2 Benchers Meeting Highlights

Outstanding Interest on Client Accounts

3 Reflect Resolve and Re-Tool

Allan's Odds and Ends

4 Protect Yourself

5 Where Are You?

Year End Bash

6 Membership Changes

7 Practice Advisory Services

8 In Memoriam

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President's Report

Year in Review

JON VAN DER KRABBEN

It has been many years since the Law Society has provided the full minutes of Bencher meetings to its members with the Communiqué or the Bencher Bulletin. These two publications attempt to keep the members informed of the discussions held and the decisions made by the Benchers on significant issues affecting our profession by providing summaries of the decisions made at each Bencher meeting. As this information by necessity comes to the members on a piecemeal basis throughout any given year, I thought it might be useful and informative to summarize the important issues dealt with by your Benchers in 2006 and some of the major issues that it appears will be dealt with in the not too distant future. As always, I invite any member with questions or opinions to feel free to contact Law Society staff, any Bencher or myself.

In 2006 full national mobility was achieved by the recent signing of the National Mobility Agreement by PEI and by the Territories signing the Territorial Mobility Agreement. Although I am more than willing to take credit for this, in reality it was achieved as a result of the hard work of our past Law Society Benchers, staff, and Executive Officers as well as the hard work of all of the other Law Societies in Canada. I hope that most of you would agree that as a general rule, mobility in our profession is a good thing and corrects the illogical anomaly of immobility that our profession, along with very few others, has had to endure to date. Whether we like it or not, I think there can be little argument against the fact that the business world has been operating in an increasingly global milieu.

Under the Rules of the Law Society of Manitoba a member was only required to report a criminal conviction, and was not required to report pending criminal charges. Prior to the National Mobility Agreement, the rules of other law societies in Canada varied from a more laissez-faire approach to (more commonly) a much stricter approach than we have historically taken. As a result, the Benchers of the Law Society recently approved changes to the rules that will require all members to report to the Law Society whenever they are charged with an offence under a Federal statute.

While many of you may be substantially in agreement with this principle, I expect that some of you will not agree based upon the credo of "innocent until proven guilty". While the philosophical merits of the new rule may be open for debate, if Manitoba wishes to be part of the National Mobility Agreement, we have no alternative but to accept this provision. I am optimistic that the new rule in this regard will affect an extremely insignificant number of our members.

You may also recall receiving information regarding the "terrible problem" of doing so well with respect to our insurance program that we have been forced to reduce our excess surplus, to the tune of one million dollars. This past year the Benchers thoroughly debated a dozen or so suggestions for doing so. They decided to spend the money on several different loss prevention initiatives, all of which have either been implemented or are on the verge of being implemented and include the following:

continued on page 7

Benchers Meeting Highlights

ALLAN FINKBEIT, Q.C.
CHIEF EXECUTIVE OFFICER

On December 16, 2006 the Benchers met and here are the highlights of their meeting:

- **Jon van der Krabben** reported on his busy presidential month, including attending Federation of Law Societies meetings and a presidential visit to the Law Society of Saskatchewan;
- Speaking of presidential visits . . . the Benchers welcomed Law Society of Alberta President **Mona Duckett** to the meeting. Mona brought greetings, participated on a panel, and was made an Honourary Member of the Law Society of Manitoba;
- Benchers approved, in final form, the rules that require members to notify the Law Society any time they are **charged** with an offence under a Federal statute;
- Benchers considered two recommendations from the Insurance Committee, chaired by **Pat Fraser**. Currently members who have a bad insurance claims history will have to pay an increased deductible and also are subject to a premium surcharge. Given that the premiums are now so low ($275), a 50% surcharge seemed a bit pointless and the Committee recommended that the surcharge be abolished for the next policy year (starting July 1, 2007). The Committee also recommended an expedited process be established to resolve deductible disputes. Benchers approved both committee recommendations;
- Benchers reviewed model rules prepared by the Federation of Law Societies setting out the prudent steps that should be followed to verify **client identity**. The Benchers indicated their comfort with the model rules in principle and directed that similar Manitoba rules should be drafted once the Federation model rules were finalized;
- Benchers approved in principle new rules that regulate **student practice** (both articling students and law students). These new rules will put the onus for determining what a student can do on the supervising lawyer, recognizing that different students have different capabilities. Lawyers will have the responsibility of only assigning tasks to students that the student is capable of doing and for providing adequate support and supervision. The draft rules will now be translated for final approval at the next Benchers meeting;
- A monitoring report on the activities of the **Legal Studies** Department was presented. Benchers discussed the future of Law Society Continuing Legal Education programming. The Benchers concluded that continuing legal education was an important part of our competence mandate and should continue to be delivered at or below cost. They also agreed that the CPLED (Bar Admission) tuition should not be significantly increased, even though it reflects only a small percentage of the actual cost of the program;
- **David Kroft** reported on the activities of the Community Legal Education Association relating to the Law Phone-In and Lawyer Referral Service that the Law Society helps fund. **Tim Killeen** reported on the November meeting of the Council of the Federation of Law Societies of Canada.

Outstanding Interest on Client Accounts

Pursuant to Rule 5-57 of the Rules of the Law Society of Manitoba, a lawyer is entitled to charge interest on unpaid fees, charges or disbursements where the lawyer and client have so agreed. Such interest is calculated from a date that is at least one month after the date the bill is delivered to the client.

The rate of interest that may be charged shall not exceed the rate established under Section 161 of the *Income Tax Act* (Canada) on the date the bill is delivered. The interest rate effective for the period January 1, 2007 to March 31, 2007 is 9%.

Notice Of Benchers Meeting

The next meeting of the Benchers of the Law Society of Manitoba will be held on **Thursday, February 1, 2007 at 12:30 p.m.** in the Society's classroom, 219 Kennedy Street, Winnipeg, Manitoba. Members of the Society are encouraged to attend and participate in the deliberations of the governing body.

Reflect, Resolve and Re-Tool

ALLAN FINEBLIT, Q.C.
CHIEF EXECUTIVE OFFICER

It's a pretty standard New Year's Eve drill . . . people reflect on the past, resolve to do new things and go out and re-tool for the new year. In my case, every December 31st I have a long hard look in the mirror (the reflect part) and every year I observe that I am flabby. Then, I resolve to run more and eat less. Next, I go out re-tooling. I buy myself a pair of new running shoes.

This year (still flabby by the way), I also reflected on a very "interesting" year at the Law Society. Lots of good things happened but I was stunned by how bad we look on the discipline side. There were way too many serious discipline problems last year . . . lawyers getting sucked into stupid schemes to defraud mortgage lenders; lawyers who acted for clients flipping properties with little or no investment in them (a scheme to artificially inflate their value); and then lawyers who didn't respond to the Law Society (at the last Complaints Investigation Committee meeting five different lawyers were charged for failing to respond to the Law Society!) and even old fashioned kiting . . . lawyers using their clients' money like a mini bank, moving funds from one client's trust account to another or "borrowing" from trust for personal use.

I guess the good news is that we did a great job of detecting and investigating serious discipline matters and a good job of prosecuting them and of reimbursing those who lost money. We were thorough, fair and efficient. But why so many serious matters and what to do about it? I have lots of theories about why, but they boil down to: I don't have a hot clue. I have, however, resolved to fix it. I am starting off the new year doing a little discipline re-tooling. Here's the plan:

1. Ratchet up the audit rotation. We will audit a lot more firms on a less predictable rotation in 2007;
2. We will fast-track ungovernable members into the discipline stream. If you can't be bothered to answer the Law Society, you likely will be charged with professional misconduct in a big hurry;
3. I have instructed our discipline counsel, whenever appropriate, to seek disbarment for members involved in mortgage fraud, kiting and theft and have retained outside counsel to support our Discipline Department in order to expedite that process.

I know that the vast majority of you are just fine and can go off and focus your energies on diet and exercise. But I hope those few of you that are involved in mortgage fraud, kiting or are just plain ungovernable, will reflect, resolve and re-tool, because if you don't, we'll be doing it for you.

Allan's Odds&Ends

ALLAN FINEBLIT, Q.C.
CHIEF EXECUTIVE OFFICER

- Welcome to our new Continuing Legal Education czar, **Eileen Derksen Mead**. Eileen practised with the Public Trustee and will be filling the large shoes left behind by **Susan Billinkoff**.
- Congratulations to Law Society Equity Ombudsperson **Brenlee Carrington Trepel** who is the winner of the MBA Equality Award which will be presented at the Mid-Winter meeting.
- Right on top of the list of people I have to buy a drink for in 2007 is **Justice Laurie Allen**. Thanks in large part to her efforts, the Manitoba family law decisions will soon be available on CanLII (www.canlii.org). All decisions dating back to 2001 are expected to be up by late spring.
- Congratulations to my old pal **Al Snell** who is a great guy and was the Co-Director of the Law Society of Saskatchewan for 19 years. Al is about to become the CEO of the Saskatchewan Legal Aid Commission.

Attend a Brand New CLE on the Duty to Accommodate:

Protect Yourself, Your Office and Your Clients!

Report of the Equity Ombudsperson

Brenlee Carrington Trepel, Equity Ombudsperson

The Duty to Accommodate within the workplace is a rapidly expanding area of the law. That's the reason behind an upcoming CLE program at the Law Society of Manitoba. I urge you to attend this important program.

Today's employers, including law firms and other legal workplaces, have an increased responsibility to take active steps in accommodating their employees. This program will help you to know the latest on the law of accommodation relating to employees with mental or physical disabilities and other medical conditions.

This year Professor Michael Lynk, an expert on the duty to accommodate, has once again donated his newly updated paper on the topic for our CLE.

As Prof. Lynk states in his work, entitled *Understanding the Foundations of the Duty to Accommodate in the Canadian Workplace*: "The essence of the duty to accommodate is straight-forward to state: employers and unions in Canada are required to make every reasonable effort, short of undue hardship, to accommodate an employee who comes under a protected ground of discrimination within human rights legislation." In most cases, the protected ground requiring an accommodation is a disability, although recent accommodation cases have involved other grounds such as religion, gender and race.

While the general rule is easy to state, the outer boundaries of accommodation are much harder to determine. But this much is clear to date: the duty requires more from the employer than simply investigating whether any existing job might be suitable for a disabled employee. Rather, the law requires an employer to determine whether existing positions can be adjusted, adapted or modified for the employee, or whether there are other positions in the workplace that might be suitable for the employee.

The employer must accommodate up to the point of "undue hardship". While there is no single definition in law of this term, the various decisions on accommodation make it clear that this effort must be substantial. The case law has clearly said that the employer must show that its attempts to accommodate were "serious", "conscientious", "genuine" and demonstrated its "best efforts."

Please join us for the Duty to Accommodate: Protect Yourself, Your Office and Your Clients on Monday, March 5th at 1:30 pm and register by calling 942-5571.

The Equity Ombudsperson can assist to resolve individual discrimination and harassment concerns; act as a sounding board in dealing with internal office concerns or complaints; provide educational seminars and speaking engagements about respectful workplace issues for legal offices; assist in the development and implementation of policies and procedures. Contact Brenlee Carrington Trepel confidentially by phone: 942-2002 or toll-free 1-866-771-2002; email: brenleecarrington@shaw.ca; fax: 474-1161; mail: P.O. Box 2555-Station Main, Winnipeg, Manitoba, R3C 4B3. You can also visit our equity initiatives site at www.lawsociety.mb.ca.

To register or for more details on this and other CLE programs, visit the Law Society of Manitoba's website at www.lawsociety.mb.ca and click on CLE PROGRAMS

Free Stuff

If you practise outside of Winnipeg your life just got a whole lot easier. Instead of having to drive to a courthouse library only to find the book you want is missing (or more likely it was never there in the first place) you can now get desktop access to an amazing collection of case law and value added products for free.

The Law Society has entered into a contract with Carswell to provide free access for all lawyers and articling students who are in private practice, work for Legal Aid or are corporate counsel that practise outside of Winnipeg, to Lawsource, which is a vast collection that includes case law, legislation, the Canadian Abridgement and the CED. To sign up for this free service contact Molly Leung at molly.leung@thomson.com.

Where Are You Now and Where Are You Going?

MARILYN BILLINKOFF
DEPUTY CHIEF EXECUTIVE OFFICER

The Law Society of Manitoba now has a membership of over 1800 lawyers and sometimes it seems as if everybody is moving - across the street, across the city and across the country. Lawyers are withdrawing from practice, retiring from practice, taking maternity and parental leaves and sabbaticals. Sometimes they are returning to private practice, going in-house or joining the crown's office. Lawyers and law firms are sometimes so busy that they forget to tell us when a lawyer joins their firm or when somebody leaves. We've even had instances of firms forgetting to pay practising fees for newly called lawyers.

All of this activity has caused us to review some of our membership procedures and consider whether we can continue to accept telephone requests to change membership status or delayed advice when someone leaves practice or moves offices. While our informal information gathering techniques worked relatively well when our numbers were small, the same cannot be said today with our active and mobile profession. We have therefore decided that we need to formalize our membership procedures in order to ensure the accuracy of our records and make sure that our members know what is required of them when they change their practising situation or office location. In the new year, we will no longer accept telephone requests to change membership status or contact information. We have developed new membership forms for lawyers to complete when they intend to resume active practice (regardless of how long they have been out of practice), withdraw from practice or change their practising arrangement or contact information. We have tried to make these forms as simple and direct as possible and members will be able to download them directly from the Law Society website. We will also mail or fax forms to members on request. We will also be adding information to our website about membership status changes and answering some commonly asked questions about the Society's membership categories.

These forms will be available early in the new year. We look forward to your help in implementing these changes and of course encourage you to continue calling for advice on your specific situation as the need arises.

Year End Bash

As always, Benchers end their year with a reception. We join with our colleagues at the Manitoba Bar Association in devouring holiday treats. It's actually a pretty full day because the Benchers meet, the MBA Council meets, and we have a joint meeting, followed by our party.

The theme of this year's joint meeting was the unauthorized practice of law. Bar Association President **Antoine Hacault** introduced the topic, Law Society President **Jon van der Krabben** spoke about the Law Society's approach to unauthorized practice and described several recent injunction applications. Past MBA President, **John Stefaniuk** described the new Ontario model where the Law Society governs paralegals and Law Society of Alberta President **Mona Duckett** spoke about Alberta's approach to unauthorized practice matters. A very lively discussion was unceremoniously cut short by Antoine who apparently heard the sound of a wine bottle being uncorked.

At their meeting of February 1, 2007 the Benchers will have a full policy discussion about the Law Society of Manitoba's approach to unauthorized practice. As always, members are welcome to attend and join the hoopla. The discussion is expected to be thorough and complete (as no wine whatsoever is being served).

Notice of Charges

On December 14, 2006 the Benchers approved amendments to the Rules requiring members (as well as articling students, applicants for admission, resumption or reinstatement, law corporations and visiting lawyers) to give written notice to the Chief Executive Officer when they are charged with an offence under a federal statute. The notice must include the particulars of the charge and further notice must be provided to the Chief Executive Officer upon the disposition of the charge. Previously, members were only required to report convictions.

Membership Changes

Practising to Non-Practising

The following members have changed their status from practising to non-practising effective on the date shown:

November 1, 2006	Maureen E. Hay
November 23, 2006	Robert M. Kozak
December 15, 2006	Rodney G. Garson

Non-Practising to Practising

The following members have changed their status from non-practising to practising effective on the date shown:

October 18, 2006	R. Cory Shangreaux
October 30, 2006	Janesca M. Kydd
January 2, 2007	Johann R. Gallagher

Practising to Inactive

The following members have changed their status from practising to inactive effective on the date shown:

August 19, 2006	Andrew S. Barg
August 27, 2006	Gary P. Dolovich
November 1, 2006	Jennifer Villebrun
November 1, 2006	Marlo E. MacGregor
November 23, 2006	Janice L. leMaistre
November 23, 2006	Catherine E. Carlson
December 1, 2006	Colleen A. Christie
December 15, 2006	Robert L. Pollack, Q.C.
January 1, 2007	Edward M. Hermann
January 1, 2007	Krista L. Boryskavich
January 1, 2007	C. Ruth Krindle

Inactive to Practising

The following members have changed their status from inactive to practising effective on the date shown:

October 17, 2006	Carrie D. Ritchot
Novmber 1, 2006	Alfred P. Kaiser
November 1, 2006	Arnold A. Goodman
November 15, 2006	Andrea E.A. Penner
January 2, 2007	Eileen S. Derksen Mead

Transfer from Another Province

The following members were called to the Bar of Manitoba and are now entitled to practise law in this jurisdiction, having fulfilled the requirements of ***Rule 5-14:***

October 17, 2006	Jennifer L. Schulz of the Law Society of Upper Canada
November 22, 2006	Hope M. Buset of the Law Society of Upper Canada
December 13, 2006	Lisa D. Parker of the Law Society of Upper Canada
December 13, 2006	Gary R. J. Bergeron of the Law Society of Upper Canada

Automatic Suspension

On **November 11, 2006, Tyler David Warren** of The Law Society of Manitoba was automatically suspended from practising law for failing to pay his annual fees.

Reinstatement

Tyler David Warren was reinstated as a practising member on November 15, 2006.

Notice of Suspension

TAKE NOTICE that by resolution of the Discipline Committee of The Law Society of Manitoba, **PAUL VICTOR WALSH, Q.C.** was convicted of professional misconduct and suspended from practising law for a period of six months, commencing on January 1, 2007 through to and including June 30, 2007.

DATED at the City of Winnipeg, in the Province of Manitoba, this 20th day of December, 2006.

Allan Fineblit, Q.C.
Chief Executive Officer

President's Report

continued from page 1

1. Subsidizing the cost of purchasing an additional $1,000,000 of excess insurance.
2. Providing a one-time CLE voucher in the amount of $100 to all members .
3. Subsidizing desktop research for rural lawyers for a 5 year period, commencing in January of 2007.
4. Hiring an experienced lawyer with excellent practice management skills to fill a newly created position of Practice Advisor. The Practice Advisor will be available to any member, free of charge, to provide practice management advice.

In October the Benchers approved significant changes and a simplification to the rules on student practice. The former student practice rules were incomplete, outdated and, quite frankly, did not make a lot of sense. In addition, the detail in the former rules largely dealt with what students were permitted to do in the area of litigation only.

The new rules will take effect in May of 2007. In addition to generally organizing the rules and making them more user friendly, the rules were changed to essentially delete the confusing detail of the prior rules. They were also made more applicable generally and dispensed with the differentiation between students who practice primarily in the area of litigation versus students who have primarily a solicitor's practice.

The essence of the rule changes also reflect the reality that a student is often supervised on a particular file by a lawyer other than his or her principal and as a result makes both the principal and the supervising lawyer jointly responsible for the supervision of a student. You can expect to receive a considerable amount of further information regarding this rule change in advance of its implementation.

Another major issue that was considered by the Benchers in 2006 was the concept of random practice audits. We already have random or spot audits of trust accounts and the proposed new concept would essentially mirror the trust account audit program but would deal with the individual practice of any lawyer and focus on competence.

Quebec has had such a program for many years and Ontario recently adopted a less intrusive practice audit program that applies only to lawyers in private practice that have been called to the Bar for eight years or less. The concept of practice audits was discussed at the recent Federation of Law Societies meetings held in November. Most law societies were not keen on implementing random practice audits and at present your Benchers are of the same view.

The reasons cited in favour of such a program include a demonstration of the law society's commitment to protect the public, and the fact this might be considered to be a pro-active initiative that will catch problems before they escalate and therefore protect the public. If this is true, the program might more than pay for itself by way of reduced complaints investigation, discipline and insurance costs. As well, other law societies that have done this believe that it is effective and other professions (doctors and chartered accountants for example) have similar programs.

There are many sound reasons not to do this, including the intrusiveness of such a program, its subjective nature and its significant expense. The Benchers essentially decided that we would be better served by spending our monies in the general areas of prevention and education.

In the very near future the Benchers will be debating the issue of mandatory Continuing Legal Education (CLE). This concept has been considered during several meetings of the Admissions and Educations Committee and their recommendations will be coming to the Benchers soon. Options range from maintaining our current model of no mandatory CLE, to mandatory reporting of CLE attendance, to completely mandatory CLE attendance. If any of you have any strong views on this subject, now would be the time to make them known to a Bencher.

As always I will be happy to address your concerns personally and individually regarding any of the topics discussed in this report or any other topic of importance to you.

Practice Advisory Services

Starting a new practice? Opening a trust account for the first time? Are your current office systems not working for you? Thinking of retiring or winding down? The Law Society's brand new Practice Advisor, **Barney Christianson**, likely can help.

Barney is a past Law Society President, a past Manitoba Bar Association President and has over 30 years of experience running a practice. His latest claim to fame is that he has been retained to provide practice advisory services to Law Society members. Practice advisory services are free of charge and cover a broad range of practice management areas.

Barney's advice is guaranteed to be practical, thoughtful and results oriented. This guarantee includes a double-your-money-back refund if you aren't satisfied with the service (. . . I did mention that the service is free right?). To obtain practice advisory services you can contact Barney directly at (204) 857-7851 or by email at bchristianson*@*ecjlaw.ca.

In Memoriam

Morton Harvey Nemy, who passed away on August 29, 2006 at the age of 81. Mr. Nemy received his call to the Bar on June 29, 1960. Upon receiving his call he became a partner in the firm, then known as Nemy, Brown & Roy, and continued to practice law in Winnipeg up to the time of his death. Mr. Nemy served as a Councillor for the R.M. of Assiniboia in the 1960s and was also active in the Optimist International Service, having served locally as President, as Governor of the Dakotas-Manitoba-Minnesota District, and as International Vice President in 1972.

Kenneth Frank Kehler, who passed away on September 20, 2006 at the age of 43. Mr. Kehler received his call to the Bar on October 14, 1993. He practised law in Manitoba for seven years as a Crown Attorney for Justice Manitoba – Public Prosecutions in Thompson and Winnipeg.

Ian David Sinclair, Q.C., who passed away on April 7, 2006 at the age of 92. Mr. Sinclair received his call to the Bar on September 19, 1941. He began his law career practising with the firm Guy Chappell before joining the Canadian Pacific Railway in 1942 as an assistant solicitor. In 1947 he relocated with CPR to Montreal where he rose to become President and CEO in 1969. In 1972 he was appointed Chairman and CEO, a title he held until his retirement in 1981. Mr. Sinclair was appointed Queen's Counsel in December, 1960, made an Officer of the Order of Canada in 1979, and Senator in 1983.

Earo Phillip Schachter, who passed away on October 21, 2006 at the age of 84. Mr. Schachter received his call to the Bar on June 26, 1969. He began his career as a Crown Prosecutor with the Attorney General's Department. From 1971 to 1977 he practised law with the firm Fletcher Baker, and then returned to the Attorney General's Department, where he remained until his retirement in 1996.

Edward Gerald Chornous, Q.C., who passed away on November 5, 2006 at the age of 75. Mr. Chornous received his call to the Bar on September 11, 1957. He began his career practising law with the firm Bowles Pybus. In 1962 he became a partner in the firm Pybus Gallagher Chornous Smith. The partnership of this firm changed a total of six times and evolved into the firm that is known today as Inkster Christie Hughes. Mr. Chornous retired from law in 2000. He was appointed Queen's Counsel in December, 1983.

Edward Parfeniuk, who passed away on November 5, 2006 at the age of 74. Mr. Parfeniuk received his call to the Bar on June 28, 1972. He began his career as a partner with the firm Booth Dennehy Parfeniuk & Ernst and later joined the firm Pitblado & Hoskin. In 1992 Mr. Parfeniuk returned to the firm that is known today as Booth Dennehy LLP where he continued to practise until his death.

Paul Norman Warren, who passed away on November 21, 2006 at the age of 54. Mr. Warren received his call to the Bar on June 28, 1979. In 1980 Mr. Warren relocated to Alberta, where he began his career in law.

The Law Society of Manitoba

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